

Message Text

PAGE 01 STATE 144233
ORIGIN L-03

INFO OCT-01 AF-10 ARA-10 EA-07 EUR-12 NEA-10 IO-13
ISO-00 SIG-01 MMO-01 EB-07 AID-05 TRSE-00 OIC-02
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AF:LWHITE
NEA:RPRICKETT
IO/UNA:JTEFFT

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TO AMEMBASSY ALGIERS IMMEDIATE IMMEDIATE
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CONFIDENTIAL

PAGE 02 STATE 144233

AMEMBASSY BRUSSELS IMMEDIATE
INFO AMEMBASSY ADDIS ABABA IMMEDIATE
AMEMBASSY ATHENS
AMEMBASSY BELGRADE
AMEMBASSY BRASILIA
AMEMBASSY BUENOS AIRES
AMEMBASSY COPENHAGEN
AMEMBASSY DACCA
AMEMBASSY DAMASCUS
AMEMBASSY LIBREVILLE

AMEMBASSY LIMA
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AMEMBASSY QUITO
AMEMBASSY SANA
AMEMBASSY SOFIA
AMEMBASSY TUNIS
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CONFIDENTIAL

PAGE 03 STATE 144233

USLO PEKING
AMEMBASSY WELLINGTON
AMEMBASSY VIENNA

C O N F I D E N T I A L STATE 144233

PARIS ALSO FOR OECD, BRUSSELS FOR USEEC INFO

E.O. 11652: GDS

TAGS: EGEN, EINV, UN, ECOSOC

SUBJECT: SUBJECT INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS

REF: (A) STATE 124534; (B) STATE 141773

1. HOST GOVERNMENTS OF ACTION ADDRESSEES ARE MEMBERS OR ACTIVE "PARTICIPANTS/OBSERVERS" IN ECOSOC INTERGOVERNMENTAL WORKING GROUP ON PROBLEM OF CORRUPT PRACTICES. INFO ADDRESSEES NOT MISSIONS TO INTERNATIONAL ORGANIZATIONS ARE IN OTHER MEMBER COUNTRIES OF ECOSOC. THIS MESSAGE ASKS ACTION ADDRESSEES TO MAKE FURTHER REPRESENTATIONS ON CORRUPT PRACTICES ISSUES IN TIME FOR JUNE 27 MEETING OF WORKING GROUP IN GENEVA. INFO ADDRESSEES SHOULD NOTE INFORMATION PROVIDED HERE IN PREPARATION FOR INSTRUCTIONS SEPTEL WITHIN NEXT FEW DAYS FOR REPRESENTATIONS DIRECTED AT GENEVA ECOSOC MEETING (JULY 6-AUGUST 5). IN VIEW OF LESSER FAMILIARITY WITH ILLICIT PAYMENTS PROBLEM OF MANY ECOSOC MEMBER

STATES NOT ON WORKING GROUP, SEPTTEL INSTRUCTIONS WILL CONTAIN TALKING POINTS AND BACKGROUND PAPER IN ENGLISH, SPANISH AND FRENCH.

2. REFTTEL (A) REPORTS STRONG PERSONAL INTEREST OF PRESIDENT CARTER IN THIS ISSUE AND SUPPORT GIVEN TO U.S. INITIATIVE AT THE LONDON SUMMIT. ECOSOC INTERGOVERNMENTAL WORKING GROUP ON PROBLEM OF CORRUPT PRACTICES ESTABLISHED BY ECOSOC RESOLUTION 2041 LAST SUMMER WILL HOLD CONFIDENTIAL

PAGE 04 STATE 144233

ITS FINAL MEETING IN GENEVA JUNE 27 TO PREPARE REPORT TO BE SENT TO ECOSOC FOR CONSIDERATION AT ITS SUMMER SESSION. ECOSOC, WHICH IS EXPECTED TO TAKE UP ITEM TOWARD THE END OF JULY, WILL DECIDE WHAT ACTION TO TAKE ON WORKING GROUP REPORT.

3. U.S. OBJECTIVE IS TO EXPEDITE INTERNATIONAL ACTION TO DETER AND PUNISH BRIBERY OF PUBLIC OFFICIALS IN CONNECTION WITH INTERNATIONAL TRADE AND INVESTMENT. WE ARE ASKING ECOSOC (A) TO CONVENE A DIPLOMATIC CONFERENCE IN 1978 TO NEGOTIATE THE TEXT OF AN INTERNATIONAL AGREEMENT TO THIS END AND (B) TO GIVE THE WORKING GROUP A CLEAR MANDATE TO DO THE PREPARATORY WORK FOR SUCH A DIPLOMATIC CONFERENCE. WE ARE ALSO ASKING THAT THE WORKING GROUP BE EXPANDED SO THAT ALL ECOSOC MEMBERS WHO WISH TO DO SO CAN PARTICIPATE. WE CAN EXPECT GENERAL EXPRESSIONS OF SUPPORT FOR BROAD U.S. OBJECTIVES AND CONSIDERABLE RESISTANCE TO ACTUAL PROGRESS FROM A NUMBER OF COUNTRIES. UP TO NOW WE HAVE HAD STRONG SUPPORT OF A FEW LDCS, SUCH AS IRAN, VARYING DEGREES OF HESITATION OR RESISTANCE FROM INDUSTRIAL COUNTRIES, AND STRONG RESISTANCE FROM A FEW LDCS SUCH AS MEXICO. MAIN TACTIC OF LDC OPPONENTS HAS BEEN TO ARGUE THAT ILLICIT PAYMENTS SHOULD BE TAKEN UP AS PART OF THE GENERAL WORK ON A CODE OF CONDUCT FOR TNCs. AFRICAN DELS, HOWEVER, HAVE RECENTLY TAKEN INTEREST IN PAYMENTS ISSUE BECAUSE THEY WISH TO USE IT AS VEHICLE FOR RESTRICTING ECONOMIC COOPERATION WITH MINORITY REGIMES OF SOUTHERN AFRICA. SOCIALIST BLOC HAS BEEN NEGATIVE AND HAS NOT PARTICIPATED IN WORKING GROUP. ACCORDINGLY, STRONG AND PERSISTENT DIPLOMATIC EFFORTS WILL BE NECESSARY TO ACHIEVE U.S. AND PRESIDENT CARTER'S OBJECTIVES ON THIS ISSUE.

4. DEPT ASKS ACTION POSTS TO BRING U.S. DRAFTED RESOLUTION TO ATTENTION SENIOR OFFICIALS HOST GOVERNMENT AND SEEK TO OBTAIN INSTRUCTIONS TO THEIR WORKING GROUP DELS GIVING FIRM SUPPORT FOR WORKING GROUP ACTION RECOMMENDING BASIC ELEMENTS OF U.S. CONFIDENTIAL

PAGE 05 STATE 144233

RESOLUTION, I.E. (1) DECISION IN PRINCIPLE THAT THERE SHOULD BE CONCLUDED AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS; (2) ECOSOC DECISION NOW TO CONVENE DIPLOMATIC CONFERENCE FOR THAT PURPOSE; (3) THAT DIPLOMATIC CONFERENCE SHOULD MEET IN

1978; (4) THAT ECOSOC WORKING GROUP BE CONTINUED TO DO PRE-PARATORY WORK WITH (A) CLEAR MANDATE TO DRAFT INTERNATIONAL AGREEMENT AND (B) EXPANDED MEMBERSHIP.

5. POSTS SHOULD TAILOR PRESENTATION TO LOCAL CIRCUMSTANCES. SUBSTANTIAL CONSULTATION HAS ALREADY TAKEN PLACE WITH OECD INDUSTRIAL COUNTRIES PARTICIPATING IN ECOSOC WORKING GROUP. WE BELIEVE THAT SPECIAL EFFORTS SHOULD PARTICULARLY BE MADE BY ALGIERS, LAGOS, FREETOWN, KINSHASA, ISLAMABAD, MEXICO, CARACAS, AND BOGOTA TO OBTAIN RECOMMENDATION OF WORKING GROUP TO ECOSOC ALONG LINES OF PARA 3 ABOVE. SUBSTANTIAL CONSULTATION HAS ALREADY TAKEN PLACE WITH OECD COUNTRIES PARTICIPATING IN ECOSOC WORKING GROUP.

A. FOR ALGIERS: EXPRESSIONS OF SUPPORT RECEIVED FROM GOVERNMENT HAVE NOT BEEN TRANSLATED INTO INSTRUCTIONS WORKING GROUP DEL. AN SUPPORT WOULD BE OF MAJOR ASSISTANCE.

B. FOR KINSHASA: UN MISSION REPRESENTATIVES ON WORKING GROUP HAVE NOT BEEN PARTICULARLY HELPFUL IN SPITE OF COMMON INTERESTS SHARED BY OUR TWO GOVERNMENTS ON THIS ISSUE. WE HOPE THEY CAN TAKE A MORE CONSTRUCTIVE AND SUPPORTIVE ROLE AT JUNE MEETING.

6. POSTS SHOULD MAKE THE FOLLOWING POINTS:

(A) ALL NATIONS HAVE A COMMON INTEREST IN CONTROLLING BRIBERY IN CONNECTION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS. BRIBERY OF PUBLIC OFFICIALS, WHETHER INITIATED BY THE PRIVATE PARTY OR THE OFFICIAL, CORRUPTS THE POLITICAL AND ECONOMIC INSTITUTIONS OF THE STATE, DISTORTS INTERNATIONAL TRADE AND INVESTMENT, IMPEDES THE DEVELOPMENT PROCESS, RAISES THE COSTS OF GOODS AND SERVICES, AND BURDENS THE BALANCE OF PAYMENTS OF CONFIDENTIAL

PAGE 06 STATE 144233

MANY COUNTRIES LEAST ABLE TO AFFORD IT AND CAN CAUSE PROBLEMS IN RELATIONS BETWEEN STATES.

(B) THERE ARE CRIMINAL LAWS IN NEARLY EVERY COUNTRY PROHIBITING BRIBERY, BUT ENFORCEMENT IS DIFFICULT AND IT IS CLEAR THAT THESE LAWS ARE NOT AN ADEQUATE DETERRENT. FURTHER MEASURES ARE NECESSARY, INCLUDING INTERNATIONAL COOPERATION, TO CONTROL BRIBERY ACROSS NATIONAL BOUNDARIES. HOME COUNTRIES MUST COOPERATE WITH HOST COUNTRIES AS CALLED FOR IN UNGA RESOLUTION 1514. THE U.S. HAS ALREADY TAKEN SIGNIFICANT MEASURES TO CONTROL THE ACTIVITIES OF ITS COMPANIES ABROAD AND IS PREPARED TO DO MORE. BUT THIS IS AN INTERNATIONAL PROBLEM REQUIRING INTERNATIONAL ACTION. AN INTERNATIONAL AGREEMENT IS ESSENTIAL TO INSURE COOPERATION OF ALL STATES CONCERNED, TO DEFINE RESPECTIVE RESPONSIBILITIES OF HOME AND HOST COUNTRIES, AND TO GIVE ALL COUNTRIES CONFIDENCE THAT THEY CAN TAKE FIRM ACTION WHICH WILL BE MATCHED BY AND AGREEABLE TO OTHER COUNTRIES CONCERNED.

(C) PRESIDENT CARTER ATTACHES GREAT IMPORTANCE TO THIS ISSUE. HE HAS GIVEN HIS SUPPORT TO NEW U.S. LEGISLATION PROHIBITING THE BRIBERY OF FOREIGN OFFICIALS BY U.S. ENTERPRISES AND TO EARLY ADOPTION OF AN EFFECTIVE INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS.

(D) ECOSOC WORKING GROUP, WITH ASSISTANCE OF UN CENTER FOR TRANSNATIONAL CORPORATIONS, HAS DONE EXTREMELY USEFUL WORK IN ANALYZING ISSUES IN DEPTH. IT IS PREPARING A REPORT WHICH WILL INCLUDE POSSIBLE TEXTS FOR AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS WITHOUT PREJUDICE TO THE POSITION OF ANY GOVERNMENT. WE BELIEVE THE TIME HAS NOW COME FOR ECOSOC TO TAKE THE DECISIONS NECESSARY TO INSURE THAT THE INTERNATIONAL COMMUNITY WILL DEAL EFFECTIVELY WITH ILLICIT PAYMENTS. IN OUR CONFIDENTIAL

PAGE 07 STATE 144233

VIEW THIS REQUIRES A FIRM DECISION TO NEGOTIATE AN INTERNATIONAL AGREEMENT AND TO ESTABLISH THE MACHINERY TO DO SO. WE, THEREFORE, PROPOSE A DIPLOMATIC CONFERENCE FOR 1978. RECOGNIZING THAT FURTHER PREPARATORY WORK WILL BE NECESSARY TO REFINE THE VARIOUS SUBSTANTIVE PROPOSALS UNDER CONSIDERATION, WE ALSO PROPOSE THAT WORKING GROUP BE EXTENDED TO DO THE NECESSARY PREPARATORY WORK IN THE FALL OF 1977 AND THE SPRING OF 1978. HOWEVER, THE WORKING GROUP SHOULD BE GIVEN A CLEAR MANDATE TO DRAFT AN INTERNATIONAL AGREEMENT AND ITS MEMBERSHIP SHOULD BE EXPANDED SO THAT ALL ECOSOC MEMBERS WHO WISH TO DO SO MAY PARTICIPATE. AN INTERNATIONAL AGREEMENT TO BE EFFECTIVE MUST HAVE BROAD SUPPORT IN THE INTERNATIONAL COMMUNITY. (FYI. THE PRESENT WORKING GROUP OF 18 HAS BEEN PROVED TO BE TOO SMALL. IT COULD NOT ACCOMMODATE THE MANY INDUSTRIAL COUNTRIES WISHING TO PARTICIPATE CONSISTENT WITH THE GEOGRAPHIC DISTRIBUTIONS INSISTED UPON BY THE DEVELOPING COUNTRIES. THEREFORE, WE NEED A SUBSTANTIALLY EXPANDED GROUP OR AN OPEN-ENDED GROUP. END FYI.)

7. IF HOST GOVERNMENT RAISES CONCERN ABOUT AGREEMENT ON ILLICIT PAYMENTS SEPARATE FROM CODE OF CONDUCT ON TNCs YOU SHOULD POINT OUT USG SUPPORTS BOTH EXERCISES, SEES NO CONFLICT BETWEEN THEM, BUT BELIEVES EACH SHOULD PROCEED AT ITS OWN PACE. FACT IS THAT ILLICIT PAYMENTS PROBLEM IS NOT EXCLUSIVELY A TNC QUESTION. IN MANY CASES PAYMENTS HAVE BEEN MADE BY COMPANIES EXPORTING GOODS WHICH ARE NOT TNCs. IN OUR VIEW ECOSOC ACCEPTED THIS CONCLUSION IN PRINCIPLE WHEN IT ESTABLISHED A WORKING GROUP LAST SUMMER WITH MANDATE, INTER ALIA, TO ELABORATE SCOPE AND CONTENT OF AN AGREEMENT ON ILLICIT PAYMENTS. RESOLUTION 2041 EXPRESSLY PROVIDES THAT WORK ON ILLICIT PAYMENTS SHOULD NOT INTERFERE WITH HIGH PRIORITY GIVEN TO FORMULATION OF A CODE OF CONDUCT BY COMMISSION ON TNCs. FOR THIS REASON TNC COMMISSION, TO WHICH U.S. FIRST BROUGHT THE ISSUE, REFERRED THE MATTER TO ECOSOC FOR ACTION. MOREOVER, WE DO NOT BELIEVE IT WOULD BE FEASIBLE TO DEAL EFFECTIVELY WITH CRIMINAL MATTERS WITHIN THE CONTEXT OF A GENERAL CODE OF CONDUCT. IT WILL BE NECESSARY TO

HAVE SPECIFIC NATIONAL LEGISLATION IMPLEMENTING AN INTERNATIONAL
CONFIDENTIAL

PAGE 08 STATE 144233

AGREEMENT COVERING SUCH TOPICS AS JUDICIAL ASSISTANCE,
EXTRADITION, HOME COUNTRY CRIMINAL LAW AND REPORTING AND/OR
DISCLOSURE OF CERTAIN AGENTS' FEES. WE HOPE THAT ALL COUNTRIES
WHO ARE SERIOUS ABOUT
DOING SOMETHING ABOUT BRIBERY WILL SUPPORT THE U.S. INITIATIVE.

8. IF QUESTION IS RAISED OF PAYMENT OF TAXES AND ROYALTIES
TO MINORITY REGIMES OF SOUTHERN AFRICA, POSTS SHOULD RESPOND
THAT USG IS SYMPATHETIC TO THOSE AFRICAN CONCERNS, AND RECOG-
NIZES DEPTH OF AFRICAN FEELING ON THESE QUESTIONS. HOWEVER,
WE WOULD STRONGLY PREFER TO PURSUE THESE EXTREMELY IMPORTANT
PROBLEMS IN MAJOR BODIES OF UN AND BILATERALLY. AS AFRICAN COUN-
TRIES KNOW, U.S. IS NOW PRFOUNDLY COMMITTED TO ACTIVIST POLICY
IN SOUTHERN AFRICA.

9. PLEASE MAKE FOLLOWING CHANGE IN PROPOSED ECOSOC RESOLUT-
ION: IN THIRD PARAGRAPH OF PREAMBLE, DELETE WORDS WHICH READ
"AND A RECOMMENATION THAT SUCH AN AGREEMENT BE CONCLUDED IN
1978." VANCE

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<< END OF DOCUMENT >>

Message Attributes

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